

REMARKS/ARGUMENTS

Claims 1 and 3 through 6 are pending in the present application. Claim 1 has been amended. Claims 2, 7 and 8 have been canceled in the present amendment.

In the Office Action, claims 1 through 5 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Design Patent No. D503,746S to Chiang (hereinafter "the Chiang design patent") in view of U.S. Patent No. 6,702,726 to Lin (hereinafter "the Lin patent"). Applicant respectfully disagrees and submits that the arguments are now moot in view of the amendment to claim 1.

The Chiang design patent is directed to a gymnastic ball that is shown and described in the figures of the patent. A design patent protects only the ornamental aspects of a structure, and not its functional aspects.

The Lin patent is directed to a compliant body-pressing exerciser of the shown size and having a domed top and several hand grips attached to elasticized bands. The exerciser may be inflated or filled with water.

Amended independent claim 1 is directed to an exercise device. The exercise device provides for a ball body made of a resilient deformable material having a peripheral wall, a receiving space defined by the peripheral wall, the peripheral wall having a largest diameter not larger than 12 inches, an inner wall surface adjacent to the receiving space, an outer wall surface opposite to the inner wall surface, a filling hole extending from the outer wall surface to the inner wall surface and in fluid communication with the receiving space, at least two ear portions protruding outwardly from the outer wall surface, and a valve member inserted detachably into the

filling hole to prevent leakage through the filling hole. The exercise device also provides for a predetermined volume of filler introduced into the receiving space through the filling hole; and two pulling units, each of the pulling units having a positioning strap connected adjustable to the hand grip and each of which includes an elastic cord member that has a connecting end connected to a respective one of the ear portions and an operating end opposite to the connecting end, and a handgrip connected to the operating end of the cord member. The exercise device also provides that the positioning strap has a first end provided with a ring member, a second end opposite to the first end and provided with a first fastening unit, and an intermediate section between the first and second ends and provided with a second fastening unit, the positioning strap being inserted into the handgrip in such a manner that the ring member and the first and second fastening units are disposed outside of the handgrip, the second end extending through the ring member and being folded back to the intermediate section to engage the first fastening unit with the second fastening unit.

Amended claim 1 incorporates the subject matter of claim 2 and the allowable subject matter of claim 7, which depends from claim 2. Accordingly, claim 1 is now allowable as including the subject matter of claim 7 and all intervening claims.

Specifically, The Office Action (of August 22, 2005), which was repeated in the instant final Office Action, "notes[s] the ring members and fastening units of Chiang fig. 1". (page 2) Additionally, the Office Action of the same date states that "[the] adjustment being in the form of a second fastening unit such as buckle, the examiner notes that to make a strap adjustable is known through the use of multiple buckle means." (pages 2 and 3)

The Chiang design patent only protects the ornamental aspects of the design and a positioning strap connected adjustably to the handgrip is not shown. There is no motivation or suggestion to combine the design patent with another patent. The Lin patent does not teach a positioning strap connected adjustably to the handgrip. Any assertion to the contrary is purely speculative. Accordingly, the cited combination does not make obvious the claimed invention of a positioning strap having a first end provided with a ring member, a second end opposite to the first end and provided with a first fastening unit, and an intermediate section between the first and second ends and provided with a second fastening unit, the positioning strap being inserted into the handgrip in such a manner that the ring member and the first and second fastening units are disposed outside of the handgrip, the second end extending through the ring member and being folded back to the intermediate section to engage the first fastening unit with the second fastening unit. Withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection is respectfully requested.

The Chiang design patent only protects the ornamental aspects of the design. A peripheral wall having a largest diameter not larger than 12 inches and a valve member inserted detachably into the filling hole are not shown. Accordingly, there is no motivation or suggestion to combine the design patent with another patent to obtain the claimed invention.

Applicant respectfully submits that the cited combination of claims does not make obvious the claimed invention. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Dependent claims 3 and 4 depend from independent claim 1

are also not allowable for the reasons discussed above with respect to claim 1.

Dependent claim 5 depends from independent claim 1 and provides that the filler is selected from a group consisting of a mixture of any two of sand, air and liquid. Dependent claim 5 is not allowable for the reasons discussed above with respect to claim 1.

The Office Action states that "to fill a device such as Chiang modified by Lin with water and not to entirely fill it 100% would meet the claim limitation". (page 2). Applicant respectfully disagrees.

Any modification to the Chiang design patent is purely speculative because design patents only protect the ornamental aspects of the design. Further, the Chiang design patent does not offer any motivation and a positioning strap connected adjustably to the handgrip is not shown. Any offered motivation would be purely speculative. The Lin patent states that " the exerciser mage be inflated or filled with water". (column, 2, liners 23 and 24). Even assuming there is any movitation for the combination with the Chiang design patent, which there is not, the combination still does not make obvious claim 5. The Lin patent only teaches inflation or that the exerciser be filled with water. There is no recitation of a mixture of any two of the claimed materials.

Accordingly, the cited combination does not make obvious claim 5. Withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection is respectfully requested.

In the Office Action claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chiang in view of Lin and U.S. Patent No. 5,205,803 to Zemitis (hereinafter "the Zemitis

patent").

Dependent claim 6 depends from amended independent claim 1 and provides that the each of the pulling units further has a fabric cover covering the cord member. Independent claim 6 is now allowable for the reasons set forth above with respect to claim 1.

Further, the Zemitis patent is directed to an elastic cord apparatus having a flexible shroud. The Office Action states that it would have been obvious to one of ordinary skill in the art to provide a fabric covering on the cord members of Chiang modified by Lin for the purpose of limiting the stretchability of the cords and [sic] against the body." (page 3) As discussed above previously, a modification to the Chiang design patent is purely speculative as the functional aspects of the design are not protected. Accordingly, withdrawal and reconsideration of the obviousness rejection are respectfully requested.

Applicant respectfully submits that the cited combination of claims is not allowable for the reasons set forth above and for the reasons set forth with respect to claim 1. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Consideration and allowance of application is respectfully requested.

Respectfully submitted,

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